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IN RE: ALIEN CHI
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Case:
Doe v. *Plyl*
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(May 4, 1
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1980)....

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1934

IN RE: ALIEN CHILDREN EDUCATION LITIGATION

STATE OF TEXAS, ET AL., APPELLANTS

v.

UNITED STATES AND CERTAIN NAMED AND UNNAMED UNDOCUMENTED ALIEN CHILDREN

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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1. Before 1975, Texas law required every local school district to offer tuition-free education to all children of school age residing in the district (J.S. App. 26). In May, 1975, the Texas legislature enacted Tex. Educ. Code Ann. tit. 2, § 21.031 (Vernon 1980), which permits local districts to deny enrollment to undocumented alien children and denies local school districts any state funds for the education of undocumented alien children (J.S. App. 26).

During 1978 and 1979, suits challenging the constitutionality of Section 21.031 and various local practices undertaken on the authority of that statutory provision were filed in each judicial district in Texas (J.S. App. 20-21). Each suit named as defendants the

State of Texas and the Texas Education Agency, as well as local school officials. One such action, *Doe* v. *Plyler*, 458 F. Supp. 569 (E.D. Tex. 1978), aff'd, 628 F. 2d 448 (5th Cir. 1980), prob, juris. noted, No. 80–1538 (May 4, 1981), involved a challenge to Section 21.031 and its enforcement by the Tyler, Texas, school district. In *Doe*, the district court held in 1978 that Section 21.031 violates the Equal Protection Clause and is pre-empted by federal law. On the Equal Protection issue, the district court in *Doe* held that Section 21.031 does not rationally advance any of the interests the State offered to support its decision to exclude the children from public school (458 F. Supp. at 585–590). The State and the local school district appealed the decision.

2. In September 1979, the State filed a motion with the Judicial Panel on Multidistrict Litigation (J.S. App. 21) to consolidate into one action all the other related cases that were pending in district courts in Texas but were not yet decided. On November 16, 1979, the panel consolidated all claims against the State and the Texas Education Agency into one action to be heard in the Southern District of Texas; the claims against local officials were retained in the districts in which the cases had been filed. On February 1, 1980, the district court for the Southern District of Texas granted the United States' motion to intervene as plaintiff in the consolidated action.

The hearing in this case was held between February 19 and March 28, 1980.[1] On July 21, 1980, the district court entered an opinion and order holding that the portions of Tex. Educ. Code § 21.031 that denied undocumented alien children a state-supported education violated the Equal Protection Clause

[1] The record in this case is voluminous, consisting of twenty-five volumes of transcript and more than one hundred exhibits

of the Fourteenth Amendment (J.S. App. 17–68
The court found that the classification the State us
was "wholly irrelevant to the achievement" of sta
objectives (J.S. App. 67).

The court also stated that for several reasons t
statute should be subjected to careful scrutiny. T
court stated that in depriving children of an educ
tion the State is denying the children a fundament
right (J.S. App. 29–41). The court also held that b
cause some districts would enroll undocumented ali
children if they paid tuition—which they are near
all unable to afford—the classification deprives the
children of an education because of their indigenc
(J.S. App. 48–52) and that the statute improperl
penalizes children based not on their own actio
but based on parental action of which the State di
approves (J.S. App. 52–53).[2] The court enjoined t
State Commissioner of Education and his "emplo
ees, agents, successors, assigns and all those in co
cert with him" from denying any child a publ
education based on the child's immigration statu
(J.S. 17–18). The State of Texas appealed.

3. While the appeal in this case was pending,[3] t
court of appeals rendered its decision on the appeal
Doe v. *Plyler*. The court of appeals held in *Doe* th
federal law does not pre-empt Section 21.031, but
agreed with the district court that Section 21.031 vi
lates the Equal Protection Clause and affirmed t
order holding the statute unconstitutional. 628 F.
448. After the court of appeals entered its decision
Doe, the United States, joined by the private plai

[2] The court also held that the statute was not pre-empt
by federal law or treaties (J.S. App. 68–89).

[3] The court of appeals stayed the order pending appeal. S
order in No. 80-1807 (August 12, 1980). Justice Powell vacat
the stay on September 4, 1980. No. A-179; J.S. App. 1–8.

tiffs, moved for summary affirmance of the
court decision in this case. The court of
granted the motion for summary affirmance o
ruary 23, 1981 (J.S. App. 9).

4. This Court recently noted probable juris
to review the *Doe* decision, which involves the
of the same statute and of its application in on
district. The present case is state-wide litigati
therefore has a more extensive record regardi
operation of the statute. Accordingly, we have
jection to appellants' suggestion (see J.S. 4) t
Court note probable jurisdiction and consolid
action with *Plyler* v. *Doe*.

Respectfully submitted.

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JUNE 1981

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